

No. 82-1229

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In the Supreme Court of the United States

OCTOBER TERM, 1982

**RONALD DAVID LOVELL, RONALD HENRICH AND
EDWARD ABDENOUR, PETITIONERS**

v.

UNITED STATES OF AMERICA

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE ELEVENTH CIRCUIT**

**MEMORANDUM FOR THE UNITED STATES
IN OPPOSITION**

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TABLE OF AUTHORITIES

	Page
Cases:	
<i>Delaware v. Prouse</i> , 440 U.S. 648	3
<i>United States v. Arra</i> , 630 F.2d 836	4
<i>United States v. DeWeese</i> , 632 F.2d 1267, cert. denied, 454 U.S. 878 (1981)	3
<i>United States v. Erwin</i> , 602 F.2d 1183, cert. denied, 444 U.S. 1071	3
<i>United States v. Harper</i> , 617 F.2d 35, cert. denied, 449 U.S. 887	3
<i>United States v. Hilton</i> , 619 F.2d 127, cert. denied, 449 U.S. 887	3, 4
<i>United States v. McGovern</i> , 622 F.2d 1042, cert. denied, 450 U.S. 911	3
<i>United States v. Piner</i> , 608 F.2d 358	4
<i>United States v. Streifel</i> , 665 F.2d 414	3
<i>United States v. Villamonte-Marquez</i> , cert. granted, No. 81-1350 (June 7, 1982)	4, 5
<i>United States v. Warren</i> , 578 F.2d 1058, cert. denied, 446 U.S. 956	3
<i>United States v. Watson</i> , 678 F.2d 765	4
<i>United States v. Williams</i> , 617 F.2d 1063	4

	Page
Constitution and statutes:	
U.S. Const. Amend. IV	1, 2, 3, 4
14 U.S.C. 89(a)	3, 4
19 U.S.C. 1581	4
21 U.S.C. (Supp. V) 955a	1
46 U.S.C. 277	4

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Petitioners contend that the stopping and boarding of their vessel on the high seas by Coast Guard officers violated the Fourth Amendment.

1. After a bench trial in the United States District Court for the Southern District of Florida, petitioners were each convicted of possessing marijuana on board a United States vessel with intent to distribute it, in violation of 21 U.S.C. (Supp. V) 955a. Petitioner Lovell was sentenced to 27 months' imprisonment, and petitioners Abdenour and Henrich were each sentenced to 24 months' imprisonment. In addition, each petitioner received a three-year special parole term. The court of appeals affirmed (Pet. App. 2-4).

The evidence at trial showed that on March 2, 1981, the Coast Guard Cutter GALLATIN was on patrol in the Windward Passage between Haiti and Cuba (4 R.A. 185-

186).¹ While patrolling the passage, officers on board the GALLATIN spotted the ENTERPRISE, an American ship registered in Wilmington, Delaware. The GALLATIN ordered the ENTERPRISE to "heave to" for boarding and sent a boarding party to the ship (4 R.A. 186).

As the boarding party neared the ENTERPRISE, the head of the party, Lieutenant Robert Mobley, noticed the distinctive odor of marijuana (4 R.A. 190). Upon boarding, Mobley informed the operator of the boat, petitioner Lovell, of the officers' authority under federal law, and he announced his intention to check the boat's documentation and its compliance with safety requirements (4 R.A. 190-191, 193). Lovell suggested that Mobley leave and report that he had not seen anything suspicious, but Mobley refused (4 R.A. 194).

As Lovell went into a compartment to retrieve the ship's registration papers, the officers observed bales of what appeared to be marijuana, and they detected that substance's distinctive odor (4 R.A. 194). Lovell and the other petitioners were then arrested. A search of the ENTERPRISE uncovered approximately 8500 pounds of marijuana stacked in bales throughout the boat (4 R.A. 221-223, 273, 310-311).

2. Petitioners contend that the stopping and boarding of the ENTERPRISE violated their Fourth Amendment rights because it was unsupported by reasonable suspicion. However, petitioners overlook Lieutenant Mobley's testimony that he detected the odor of marijuana as the boarding party approached the ENTERPRISE (4 R.A. 190). Thus the Coast Guard officers clearly had reasonable suspicion of criminal activity before boarding the vessel.

¹"R.A." refers to the Record on Appeal.

In any event, the Coast Guard officers were entitled to stop and board the ENTERPRISE in order to conduct a standard safety and documentation check without having reasonable suspicion of criminal activity. Under 14 U.S.C. 89(a), Coast Guard officers are authorized to board American flag vessels on the high seas for those purposes. The courts of appeals that have squarely addressed the issue have uniformly held that the exercise of that authority does not violate the Fourth Amendment, and this Court has repeatedly declined to review these decisions. See, e.g., *United States v. DeWeese*, 632 F.2d 1267 (5th Cir. 1980), cert. denied, 454 U.S. 878 (1981); *United States v. McGovern*, 622 F.2d 1042 (5th Cir. 1980) (table), cert. denied, 450 U.S. 911 (1981); *United States v. Hilton*, 619 F.2d 127 (1st Cir.), cert. denied, 449 U.S. 887 (1980); *United States v. Harper*, 617 F.2d 35 (4th Cir.), cert. denied, 449 U.S. 887 (1980); *United States v. Erwin*, 602 F.2d 1183 (5th Cir. 1979), cert. denied, 444 U.S. 1071 (1980); *United States v. Warren*, 578 F.2d 1058 (5th Cir. 1978) (en banc), cert. denied, 446 U.S. 956 (1980); but see *United States v. Streifel*, 665 F.2d 414 (2d Cir. 1981) (dictum that reasonable suspicion required). There is no greater reason to grant review here.

Relying primarily on *Delaware v. Prouse*, 440 U.S. 648 (1979), petitioners argue that the stopping and boarding of their vessel violated the Fourth Amendment because the Coast Guard officers acted without reasonable suspicion that the vessel was violating safety or documentation requirements or was "otherwise subject to seizure for violation of law" (440 U.S. at 663). In our view, the rule of *Prouse* —prohibiting suspicionless stops of automobiles for registration and license checks — should not be applied to boardings of vessels. In light of the important governmental interests in enforcing the numerous laws applicable to vessels on the high seas (including documentation and licensing requirements, marine safety and navigation laws, and

fisheries conservation and management laws), the practical difficulties involved in law enforcement at sea, and the reduced expectations of privacy of those on board American flag vessels because of the pervasive nature and long history of maritime regulation, the courts of appeals have correctly held that the intrusion upon privacy interests occasioned by boardings conducted under the authority of 14 U.S.C. 89(a) is not unreasonable within the meaning of the Fourth Amendment. See *United States v. Arra*, 630 F.2d 836, 840-842 (1st Cir. 1980); *United States v. Hilton*, *supra*, 619 F.2d at 131-133; *United States v. Williams*, 617 F.2d 1063, 1079-1084 (5th Cir. 1980) (en banc).

Contrary to petitioners' contention, the decision below does not conflict with *United States v. Piner*, 608 F.2d 358 (9th Cir. 1979). In *Piner*, the court held that the Fourth Amendment was violated by the warrantless and suspicionless nighttime boarding of a pleasure vessel on San Francisco bay by Coast Guard personnel for a safety and documentation inspection. The court assumed arguendo that the "governmental interest in securing compliance with safety regulations outweighs the intrusion on privacy encountered in the ordinary boarding" (*id.* at 361), but it held that the governmental interest could be sufficiently protected by random daytime boardings and did not justify the increased "subjective intrusion" of suspicionless boardings of vessels after dark. But see *United States v. Watson*, 678 F.2d 765 (9th Cir. 1982) (upholding suspicionless nighttime boarding of vessel on high seas for safety and documentation check). Since the boarding in this case took place during daylight hours (4 Tr. 228-229), there is no conflict with *Piner*.²

²In *United States v. Villamonte-Marquez*, cert. granted, No. 81-1350 (June 7, 1982), this Court has before it the issue whether the authority granted Customs officers by 19 U.S.C. 1581 and 46 U.S.C. 277 to board

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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MARCH 1983

vessels on inland waters for the purpose of inspecting the vessels' documents violates the Fourth Amendment when the boarding is made without reasonable suspicion of a violation of law. It is unnecessary to hold this case pending a decision in *Villamonte-Marquez* because the stopping and boarding by the Coast Guard here occurred on the high seas under different statutory authority. Moreover, as we have shown, the boarding was justified by reasonable suspicion.